

Bluth



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Spokane Industries, Inc.

File: B-231425

Date: June 6, 1988

DIGEST

A protest to the General Accounting Office is untimely where filed more than 10 working days after the initial adverse action by the agency on a protest filed at that level. Subsequent attempts to pursue the matter at the agency level do not toll the 10-day period.

DECISION

Spokane Industries, Inc., protests the terms of the Department of the Air Force request for proposals (RFP) No. F41650-88-R-0011 for fuel drain bowsers, which are mobile, self-contained tanks used to remove fuel from airplanes. Spokane protests the inclusion in the RFP of allegedly proprietary data it had provided in an unsolicited proposal that the firm had submitted to the San Antonio Air Logistics Center (SA-ALC).

We dismiss the protest as untimely.

Spokane initially protested the matter to the contracting activity on December 30, 1987; offers in response to the solicitation were due by January 7, 1988. According to Spokane, between January and March of 1988 it received oral assurances that the protest was being reviewed in the buyer's office and a decision would be made there. The protester, however, received a response letter from the SA-ALC Deputy Director, Contracting and Manufacturing, on March 26 denying the protest as without merit.

Spokane states that in an effort to pursue the protest within the contracting activity, the firm then contacted the buyer, and was again assured by him that a response to the protest would come from his office. However, on May 2, the buyer informed the protester that the letter of March 26 was the contracting activity's response to the protest. Spokane then filed a protest in our Office on May 13.

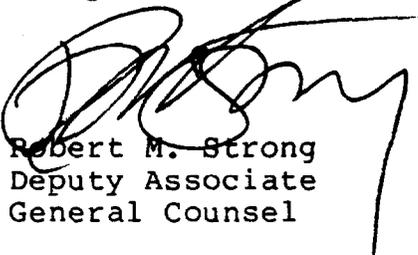
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As stated in our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988), a protest concerning alleged improprieties apparent in an RFP must be filed with the contracting agency, or the General Accounting Office, before the closing date for the receipt of proposals in order to be timely. Spokane's letter of December 30 constituted such a timely protest with the agency, as offers were not due until January 7.

Section 21.2(a)(3) of our Regulations, however, requires that when an initial protest is filed with the contracting activity, any subsequent protest to our Office must be made within 10 working days after initial adverse agency action. Section 21.0(f) defines such action as any action, or inaction, by the contracting agency that is prejudicial to the protester's position, including the receipt of proposals without taking the corrective action requested in the agency-level protest. Therefore, the Air Force's receipt of offers on January 7 constituted initial adverse agency action, and Spokane had 10 working days from that date within which to file a protest in our Office. As stated above, however, Spokane did not protest to our Office until May 13.

With respect to Spokane's pursuit of the protest with the buyer, we point out that protesters are charged with constructive knowledge of the contents of our Regulations, including the filing timeframes. See A.B. Dick Co., B-228242.2, Oct. 30, 1987, 87-2 CPD ¶ 420. Our timeliness requirements cannot be waived by the actions of an official of the contracting activity, nor does a firm's continued pursuit of its protest with the activity toll the 10 working day time limit for filing here after the initial adverse action. Id. We further note that the letter of March 26 not only was a clear denial of Spokane's protest to the Air Force, but it came more than 2 months after the initial adverse action, as did the buyer's subsequent alleged oral advice on the protest's status.

The protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel